



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

**SATS No. PA-172-FOR; Docket ID: OSM-2020-0001;
S1D1S SS08011000 SX064A000 212S180110;
S2D2S SS08011000 SX064A000 21XS501520**

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (hereinafter, the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Pennsylvania is requesting to make changes to its regulations addressing four required amendments, one part not previously approved, and several program revisions submitted. The proposed amendment includes, but is not limited to, augmented seeding, bonding, haul roads, effluent limitations for bituminous underground mines, temporary cessation, definition of Surface Mining Activities, civil penalties,

administrative requirements, and Employee Financial Interest Reporting Form, as well as other administrative updates and corrections.

This document gives the times and locations that the Pennsylvania program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we may hold a public hearing or meeting on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. PA-172-FOR, by any of the following methods:

- *Mail/Hand Delivery:* Ben Owens, Acting Field Office Director, Pittsburgh Field Office, 3 Parkway Center South, 2nd Floor, Pittsburgh, PA, 15220
- *Fax:* (412) 937-2903
- *Email:* bowens@osmre.gov
- *Federal eRulemaking Portal:* The amendment is assigned the Docket ID: OSM-2020-0001, If you would like to submit comments go to <https://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and

additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings or meetings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Pittsburgh Field Office or the full text of the program amendment is available for you to read at <https://www.regulations.gov>.

Ben Owens, Acting Field Office Director

Pittsburgh Field Office

Office of Surface Mining Reclamation and Enforcement

3 Parkway Center Drive South, 2nd Floor, Pittsburgh, PA 15220

Telephone: (412) 937-2827

E-mail: bowens@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

William S. Allen, Jr., Director

Bureau of Mining Programs

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

400 Market Street

Harrisburg, PA 17101

FOR FURTHER INFORMATION CONTACT: Ben Owens, Acting Field Office
Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and
Enforcement, 3 Parkway Center Drive South, 2nd Floor, Pittsburgh, PA 15220
Telephone: (412) 937-2827. E-mail: bowens@osmre.com.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Statutory Orders and Executive Reviews

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved, State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). Based on these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Proposed Amendment

By letter dated March 16, 2020, (Administrative Record No. PA 906.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This submittal addresses four separate required program amendments codified at 30 CFR 938.16(m)-(o) (bonding) and 938.16(mmm) (haul roads), and a correction to a previously unapproved term at 938.12(d) (augmented seeding). In addition, the submission includes numerous other revisions to the Pennsylvania program that are unrelated to the required amendments.

The proposed amendment would make changes to the following:

A. 25 Pa. Code § 86.151(d) - Augmented Seeding (Relating to period of liability).

The program amendment proposes to delete the term “augmented” in the last sentence in accordance with 30 CFR 938.12(d).

B. Chapter § 86.158(b) (Relating to Special Terms and Conditions for Collateral Bonds). The program amendment proposes to make the corrections and/or additions to the rules and reiterate that collateral bonds are to be determined by current market value and not face value and shall be at least equal to the amount of the bond less any legal and liquidation fees, in accordance with 30 CFR 938.16(m)-(o).

1. *25 Pa. Code § 86.158(b)(1)* proposes to make the revision of “may” to “will.”

2. *25 Pa. Code § 86.158(b)(2)* proposes to add the wording “less any legal and liquidation costs.”

3. *5 Pa. Code § 86.158(b)(3)* proposes to require the posting of any needed additional bond amount with the permit renewal, which is at least every 5 years.

C. 25 Pa. Code § 88.1 Haul Roads. The proposed amendment expands the definition of haul roads to include public roads that are used as an integral part of the coal mining activity in accordance with 30 CFR 938.16(mmm).

D. 25 Pa. Code § 89.52 Effluent Limitations for Bituminous Underground Mines.

The proposed amendment would delete the portion of subsection (f), eliminating the alternative effluent limits for passive treatment systems for underground mines.

E. Temporary Cessation. The proposed amendment would make revisions in each of the citations for the removal of the upper time limits.

1. *25 Pa. Code § 87.157 (Relating to cessation of operations: temporary)*

2. *25 Pa. Code § 88.131 (Regarding anthracite surface mines)*

3. *25 Pa. Code § 88.219 (Regarding anthracite bank removal)*

F. 25 Pa. Code § 86.1 and § 87.1 Definition: Surface mining activities. Proposed amendment seeks to incorporate by reference the 30 CFR 701.5 definition of surface mining activities to assure consistency with the Federal requirements.

G. 25 Pa. Code § 86.193(b) and (c) - Civil Penalties. The proposed amendment seeks to resolve the fluctuating dollar amount by utilizing the Federal point system thereby mandating that the assessment of penalty will be reflective of the violation circumstances and not a specific dollar amount.

H. Administrative Requirements

1. *25 Pa. Code § 86.31(c)(1) (Relating to Public Notices of filing of permit applications)* seeks to remove the registered mail requirement and allow electronic notice in cases where applicable.

2. *25 Pa. Code § 86.62(a)(3) (Relating to identification of interests)* seeks to remove the date of issuance requirement.

I. 25 Pa. Code § 86.238. The proposed amendment seeks to update the OSMRE Form 705-1 to Form 23.

J. Administrative Updates and Corrections

1. *Storm Events* – The proposed amendment would remove tables provided in Sections 87.103, 88.93, 88.188, 88.293 and 89.53 and replaces them with a general reference to data available through NOAA or an equivalent resource.

2. *Remining Financial Guarantees* The proposed amendment offers the following changes:

- 25 Pa. Code § 86.281(b) to describe the process used to determine the amount of an individual remining financial guarantee;
- to revise § 86.281(c) to clarify that the designated amount is maintained at the program level rather than on a permit-by-permit basis;
- § 86.281(d) to refer to the designated amount when describing the permit limit, the operator limit and the program limit; and
- § 86.281(f) to describe the reserve;
- § 86.282(a)(4) adds that to participate, the operator cannot have been previously issued a notice of violation relating to maintaining bonds, including a missing or late payment.
- § 86.284(d) is being revised to read the same as PA SMCRA.

3. *Natural Resources Conservation Service*. This proposed amendment corrects the agency name from Soil Conservation Service to Natural Resource Conservation Service.

4. *Conservation District*. The proposed amendment corrects the reference at § 86.189(b)(4) from Soil Conservation District to its current name of Conservation District.

5. *Chapter 92a*. This proposed amendment corrects all references of Chapter 92 to Chapter 92a in Chapters 86-90.

6. *Department Reference*. This proposed amendment updates reference of Department of Environmental Resources in Section 86.232 to Department of Environmental Protection.

7. *Chapter 96*. This proposed amendment seeks to update and include reference to Chapter 96 in Sections 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

8. *Coal Ash and Biosolids*. This proposed amendment seeks to update references of “fly ash” to “coal ash” and “sewage sludge” to “biosolids” in 25 Pa. Code §§ 86.54 and 87.100(d).

9. *Anthracite Mine Operators Emergency Bond Fund*. This proposed amendment seeks to delete the word “deep” from 25 Pa. Code § 86.162a to clarify that not only deep mines are eligible for participation.

10. *Coal Refuse Disposal Site Selections*. This proposed amendment adds language to 52 P.S. § 305.54a to read “an area adjacent to or an expansion of an existing coal refuse disposal site.”

11. *25 Pa. Code § 86.51* corrects “...a review of the permit shall be no less frequent than the permit midterm of every 5 years...” The underlined “of” should be “or”.

12. *25 Pa. Code § 86.84* corrects Mining Enforcement and Safety Administration to Mine Safety and Health Administration.

13. *25 Pa. Code § 88.1* “A surface right-of-way for purposes of travel by land vehicles used in coal exploration of surface coal mining and reclamation operations.” The underlined “of” should be “or”.

14. *Remining Program*.

- 25 Pa. Code § 88.502 the correct citation is §88.295(b)-(i).
- 25 Pa. Code § 88.507(c) the correct citations are §§88.95(b)-(g), 88.190(b)-(g) and 88.295(b)-(i).
- 25 Pa. Code §§ 88.508 and 90.308 shall delete the references to § 86.172(d) as this subsection does not exist.

The full text of the program amendment is available for you to read at the

locations listed above under **ADDRESSES** or at <https://www.regulations.gov>.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory Orders and Executive Reviews

*Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563—
Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR part 938

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,
Regional Director
North Atlantic - Appalachian Region
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